

Wednesday, January 29, 1862

***INDIAN LEG.
COUNCIL
DEBATES***

Vol. 1

18 Jan. - 24 Dec.

1862

P. L.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

THE Council met at Government House on Wednesday, the 29th January 1862.

PRESENT :

His Excellency the Viceroy and Governor-General of India, *presiding*.

His Honour the Lieutenant-Governor of Bengal.

His Highness the Maharajah of Puttiala, K.C.S.I.

The Hon'ble Sir H. B. E. Frere, K.C.B.

• The Hon'ble Cecil Beadon.

Major-General the Hon'ble Sir R. Napier, K.C.B.

The Hon'ble W. Ritchie.

The Hon'ble H. B. Harington.

The Hon'ble H. Forbes.

The Hon'ble C. J. Erskine.

The Hon'ble W. S. Fitzwilliam.

The Hon'ble D. Cowie.

The Hon'ble Rajah Deo Narain Singh Bahadoor.

The Hon'ble Rajah Dinkar Rao Rugonauth Moontazim Bahadoor.

STATE GRANTS.

The Hon'ble SIR BARTLE FRERE introduced the Bill for securing certain grants of immoveable property made by the State, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Harington, the Hon'ble Mr. Forbes, the Hon'ble Mr. Erskine and the Hon'ble Rajah Deo Narain Singh.

The Hon'ble RAJAH DINKAR RAO said that the Government had power to make stipulations when it made grants, but this Bill was not necessary for the advantage of Government, and it was not necessary for the benefit of the subject. It was contrary to the usages of the people, and would only be acceptable to such as had contracted debts. Immoveable property would not be valuable to a man if he could not dispose of it either by mortgage or sale. The Bill exempted such property from process of the civil Court, but it might be seized to liquidate a fine from a criminal Court. If it

were alienable for such a purpose, it should be also in payment of just debts. Persons applied self-acquired property in charity, or works of public utility, or to reward dependents ; and in times of difficulty would mortgage their property, but seldom would sell it. Under this Bill, however, they would have no power at all over immoveable property which had been granted to them.

The Hon'ble MR. ERSKINE said he had no objection to the principle of the Bill, and would only therefore observe, with reference to the arguments just urged, that the Rajah Dinkar Rao had not apparently given their full weight to two considerations : first, that the State, although it might, in making new grants, impose its own conditions on the grantees, could not, without the sanction of the legislature, exempt any grant from the action of the civil Courts ; and secondly, that the Bill as now drawn could not be injurious to the creditors of old grantees ; as it was provided that in such cases the State should interpose only with the consent of all concerned.

The Hon'ble MR. COWIE supported the principle of the Bill.

The Hon'ble MR. RITCHIE said that the Bill was considerably improved since it had been first drawn. Even now some amendments appeared to be necessary. The principle, however, was sound and just ; namely, that such grants as were made to reward eminent public services should stand on a different footing from other grants. The object was to perpetuate a benefit to a family, and by perpetuating the memory of a loyal action to encourage posterity to emulate the example. But some relaxation might be required in the case of incumbents who had been so rewarded, but who were in embarrassed circumstances. The Bill at present prevented all assignments, except leases for seven years. He would suggest that incumbents might also alienate for the period of their own lives, and that execution might issue for the seizure of the life interest of an incumbent. This would be analogous to the provision in English Acts granting annuities as rewards for services. In the debate in the Legislative Council, it had been pointed out that the Bill perpetuated the entail, though there should be a failure of the heirs specified in the grant. It appeared to be reasonable that, if such heirs failed, and the property devolved on collateral descendants, it should be held unfettered by restrictions.

The Hon'ble, SIR R. NAPIER agreed with Mr. Ritchie both as to the principle and the necessary modifications.

The Hon'ble MR. BEADON thought that there were formidable objections even to the principle of the Bill. He agreed with the Rajah Dinkar Rao, that the object was not so much to perpetuate the memory of services, as to reward them in the manner most acceptable to the recipients. In most cases

a recipient would prefer to receive a grant unencumbered by restrictions, and it would be unseemly if the Government stepped in when the recipient was an embarrassed man, and declared his property exempt from seizure. He referred to the case in the North-Western Provinces which had led the Lieutenant-Governor to apply for an Act of this nature. The circumstances of that case, he thought, pointed to a different conclusion. They rather showed that a mistake had been made in the nature of the reward granted to the Ressalder in question, or that there should be a general law to save all land, except such as was not mortgaged, from seizure under process of the Courts. But the principle of this Bill, which went to exempt lands granted for services, and to treat the exemption as part of the rewards, was open to doubt. Lands granted to support titles stood upon a different footing, and should be dealt with separately, as Sir Jamsetjee Jeejeebhoy's Estate Bill had been. He also noticed that the Bill made no provision for ultimately barring the entail, if the incumbent and the Government united in wishing to do so.

The Hon'ble RAJAH DEO NARAIN SINGH said that the grants contemplated by this Bill would not be generally acceptable, because they would not be in accordance with the customs of the country; and if so, they would not be valuable as rewards. If all power of alienation were taken away, the grant would assume the character of a trust. Men had naturally a preference for liberty over every kind of restraint, and would not approve of restrictions in their property. If this Bill were passed, it should be provided that the conditions should be imposed with the assent of the grantees.

His Highness the MAHARAJAH of PUTTIALA greatly approved of the object and principle of the Bill, because the honours conferred by the State would be firmly secured to the grantees and their families, and because the power derived from such grants would enable grantees to render good service to the State, and because their inalienability and security would render others more anxious to obtain such rewards for good service, and so a powerful bond of affection would be created between the Government and the subjects. He approved of the power of granting leases, though he thought it might lead to disputes in times of calamity, but the Collector might be authorised to adjust them. With reference to the power of the Governor-General to prescribe, in the grant, the course of descent, he thought that the rules introduced into the Cis-Sutlej States should be adopted for grants already made, and that in future grants the rule of primogeniture should prevail. He suggested an amendment in the 4th Section, which provided for the mode of enforcing payment of any claims not barred by the Act.

His Excellency THE PRESIDENT said that it appeared to be the general opinion that the Bill should be referred to a Select Committee, and he was himself in favour of that course. At the same time, he felt that some new objections had been raised to the Bill, and that others had been stated in a manner more pointed than he had previously heard. On the part of the Government he must demur to the principle of the Rajah Dinkar Rao, that the only object of the Government in such grants was the benefit of the grantee. A great object was, as Mr. Ritchie had stated, the establishment, if possible for all time, of an example of eminent service rendered to the State and of a conspicuous reward granted. The record in every such case should be made as enduring as possible. In England that course had been followed for at least a century and a half, as in the cases of the Marlborough and Wellington dignities and estates. Mr. Beadon had noticed the difference between grants with hereditary peerages and the ordinary rewards in this country. Exceptional as grants were at home, they could be dealt with specially. But here a general Bill authorising the Government to impose conditions appeared to be necessary. The Rajah Deo Narain had said that such rewards would be of little value. But the Maharajah of Puttialla had justly considered that the contemplated stipulations would render the grants more honourable and acceptable. He thought that the Bill should be referred to a Committee, and further considered with their Report, and that full time should be given for consideration.

The Hon'ble THE LIEUTENANT-GOVERNOR said that he had no objection to the Bill being referred to Select Committee, though he had some doubts on the principle of the bill, and considerable doubts as to the details. He doubted if any grant should be entailed without an entail of some honour or title. If that were provided, he should not object. But this Bill would apply to all grants, whether there were titles or not. The Maharajah of Puttiala had said that future grants secured by this Act should descend under the rule of primogeniture. This, he had no doubt, would be very acceptable in the case of large grants, and he saw no objection to it in principle.

The Hon'ble SIR BARTLE FREER said that this Bill might be considered from two points of view; that of the grantor and of the grantee. The grantor (the State parted with property for a certain purpose, and had no object but to secure that purpose, which was the perpetuation of rewards for good service. But the effect of the Bill might be to encourage improvidence. The cases of large grants intended as monuments of a Nation's gratitude were distinct, and might be dealt with separately from ordinary grants for good service. Looking at the Bill from the grantee's point of view, very little could be said for it. It would be inoperative, like all attempts to protect persons from the effects of their own improvidence; and the Rajahs Dinkar Rao and Deo Narain had

pointed out that conditional grants would not be acceptable. Looking back to our own history, it would be seen how inconvenient such an entailing measure would have been in the reign of Elizabeth or Cromwell, when grants of lands were numerous. His impression was, that great grants should be dealt with separately, and that it was unnecessary to interfere with smaller ones. The Bill had been brought in at the instance of the Lieutenant-Governor of the North-Western Provinces. Were it his own Bill, he (SIR BARTLE FRERE) would withdraw it. But acting in behalf of His Honor, he would wish to refer it to him before proceeding further; and, in the meantime, would move for leave to withdraw his motion, leaving it open to proceed with the Bill or not as the opinion of the Lieutenant-Governor might show to be desirable.

His Excellency THE PRESIDENT stated, that the Rule did not provide for an amendment of this kind at the present stage.

After a brief discussion on the point of order, the Motion to refer the Bill to the Select Committee was put and agreed to.

FOREIGNERS.

The Hon'ble MR. BEADON introduced the Bill to make further provision relating to Foreigners, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ritchie, the Hon'ble Rajah Deo Narain Singh and the Mover. He stated that the Bill only revived, for a period of two years, an Act which had expired; and as the interval between its expiration and renewal ought to be as short as possible, he proposed that the Committee should be instructed to submit their Report at the next Meeting.

The Motion was put and agreed to.

NEW COINAGE.

The Hon'ble MR. RITCHIE introduced the Bill to provide for a new Silver and a new Copper Coinage, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Harington, the Hon'ble Mr. Fitzwilliam, the Hon'ble Rajah Deo Narain Singh and the Mover.

The Motion was put and agreed to.

COURTS OF REQUESTS (STRAITS)—MUNICIPAL ASSESSMENT (RANGOON, &c.)—EMIGRATION (SEYCHELLES).

The Hon'ble MR. FORBES postponed, till the next Meeting, the introduction of the following Bills:—

1st.—A Bill to enlarge the jurisdiction of the Courts of Requests in the Settlement of Prince of Wales' Island, Singapore and Malacca.

2nd.—A Bill to extend certain provisions of Acts XIV and XXV of 1856 to the Town and Suburbs of Rangoon, and to the Towns of Moulmein, Tavoy and Mergui; and for appointing Municipal Commissioners, and for levying rates and taxes in the said Towns.

3rd.—A Bill relating to Emigration to the British Colonial Dependency of Seychelles.

PENAL CODE (CHAPTER XII) AMENDMENT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend Chapter XII of the Indian Penal Code, and to provide for certain offences against the coin. He stated that since the last Meeting, when he obtained leave to bring in a Bill for the protection of the public against bad coin, it had been found more convenient to separate the Penal clauses, and to embody them in a separate Bill as an amendment of the Penal Code. This was the Bill which he wished to introduce.

The Motion was put and agreed to.

BREACHES OF CONTRACT.

The Hon'ble MR. RITCHIE moved for leave to introduce a Bill relating to breaches of contract committed in bad faith. He said that the object of the Bill was to provide proceedings of greater strictness in regard to the amount of damages, and the nature of the execution, to be awarded against defendants in civil suits, who broke their contracts in bad faith, without reasonable excuse, after having received consideration for the same. A Bill had been brought into the Legislative Council last year, by the Hon'ble Mr. Beadon, for the punishment of breaches of contract of particular class. It was framed on the Act of 1859 relating to laborers and artificers, which Act had been based on special legislation at Home relative to workmen and laborers. That Bill had been referred to a Select Committee; but soon after, a Despatch was received from the Secretary of State, objecting to the Bill, mainly on the ground that it dealt with breaches of civil contract in a criminal way. The Chairman of that Committee (Sir Barnes Peacock) had prepared a Report, in which he had stated that it was not desirable that the Bill should be passed in a shape to which the Secretary of State, to whom the power of disallowance had been granted by Parliament, objected; but that there was no reason why the Council should not give some relief, and he proposed that, in all such cases as were included in the Bill, when a civil Court awarded damages, it might commit the defendant to the civil jail where he should maintain himself; or, if he were maintained by the Government, be kept to hard labor. Since that period the Government of India had come to the conclusion, that the principle of that recommendation should be adopted, but extended to all contracts in which a defendant had committed a breach after having received consideration. This would be less objectionable than a Bill confined to agricultural contracts; and a law dividing broadly between honest and dishonest debtors would be more consonant with just and sound legislation, than a law confined to a special class of persons. The Bill would provide that, when a defendant had received consideration for a contract and broken it, the Court, if it found that the contract had been broken in bad faith and without reasonable excuse, and

if the damages were not paid, might commit the defendant, for the period specified under the Civil Code, to jail, where he should maintain himself, or be kept to hard labor, and should not be entitled to discharge, either under the discharge clauses of the Civil Code, or an order of the Insolvent Court. The Bill was limited to cases of dishonest and wilful breaches of contract, and was not open to the objections which had been urged to the former Bill, inasmuch as it was not confined to any particular class of persons or of contracts; it did not submit contracts in which equities might have to be considered to tribunals unaccustomed to deal with civil suits; and its machinery could not be perverted to the purposes of oppression. It would include all the cases embraced in Mr. Beadon's Bill and many others as important.

His Honor THE LIEUTENANT-GOVERNOR stated that the Bill, as explained by Mr. Ritchie, appeared to be quite unobjectionable; and he should not have made any remark on it if he had not been strongly opposed to the Bill introduced last year. The two measures were so fundamentally different, that, while retaining his objection to the former Bill, he had no objection to the introduction of this.

The Hon'ble MR. BEADON said he had no hesitation in admitting that the present was a great improvement on the former Bill. It was more comprehensive, and not open to the objections to which the former was liable. It would be applicable to those contracts only in which a consideration had been given and received. He considered that the advance was the element that brought the case within the Criminal Law. But the Chief Justice had considered that that point was immaterial, and that the law should apply to all branches of contract in bad faith. He (MR. BEADON) considered that the receipt of an advance gave the aspect of a criminal breach of trust to a breach of contract, and that in many such cases Section 405 of the Penal Code, and the punishment in Section 406, would apply. By those clauses, and Mr. Ritchie's Bill, he considered that every legitimate object was secured.

The Hon'ble MR. HARRINGTON said that, in assenting to the present Motion, he did not consider that he was assenting to the principle of the Bill which he considered to be, that in certain cases defendants in civil suits should be kept in jail at the expense of the State, and not at the expense of the plaintiffs. He quoted the 16th Rule, and stated that he apprehended that the discussion on the principle would be held at another stage.

The Hon'ble MR. RITCHIE in explanation said that it was not proposed to extend the Bill to contracts in which no consideration in money, goods, or the like had been given; and where the plaintiff's part rested in promise only. On the other hand, the consideration need not be confined to money, but the Act would apply in the case of goods supplied by tradesmen; land let by landlords; as well as contracts made on advances by planters or capitalists. The breaches of trust referred to in the Penal Code were those in which a

man, having received money or property under any contract or obligation to apply it specifically to a particular purpose, misapplied it. The breaches of contract which the Bill dealt with were those, in which a man received money or property, not necessarily for the purpose of applying the particular money or property to a specific purpose, but as a consideration for a promise on his part to perform some act as an equivalent.

His Excellency THE PRESIDENT agreed with the Hon'ble Mr. Harington in his interpretation of the Rules. The question put was, whether there was a *prima facie* case for a Bill. As to the principle of the Bill proposed, that would be affirmed or rejected when the Bill was introduced. Any Member who objected to the principle of the Bill could object to its going into Committee.

After a short discussion on the point of order, the Motion was put and agreed to.

ADMINISTRATION OF JUSTICE AT ADEN.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to provide for the administration of Civil and Criminal Justice at Aden. He stated that the object of the Bill was to place the administration of Justice at Aden on a stable footing. The Penal Code supplied the Criminal Law, but it was necessary to declare the nature of the Civil Law that should be in force; to remove doubt as to the jurisdiction of the Resident sitting as a Court; and to provide for an appeal to the Sudder Court at Bombay.

The Motion was put and agreed to.

HUMEERPORE BILL.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to remove the District of Humeerpore in the North-Western Provinces from the operation of the General Regulations. He stated that this Bill was introduced at the instance of the Hon'ble the Lieutenant-Governor. Humeerpore was one of four Districts in the Division of Jhansi. Three of them were Non-Regulation Districts, and it was necessary to place Humeerpore on the same footing.

The Motion was put and agreed to.

WILLS ACT AMENDMENT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill for the amendment of Act XXV of 1838 (relating to wills of persons whose personal property cannot by the law of England pass to their representatives without

probate or letters of administration). He stated that the Wills Act passed in the 1st year of Her Majesty applied here, and that all the formalities therein prescribed must be followed by British subjects. But a subsequent Amending Act of Lord St. Lendards had relaxed some of the strict technicalities, and it was intended to extend those amendments to this country. It would be open for consideration whether those relaxations might not be extended so far that it should no longer be necessary for the two witnesses to a will to sign in the presence of each other.

The Motion was put and agreed to.

PROPERTY VESTED IN TRUSTEES AND MORTGAGEES.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to amend and consolidate the law relating to the conveyance and transfer of property in India vested in Trustees or Mortgagees, in cases governed by English Law. He stated that its object was to extend to India the recent amendments in the Law relating to Trustees and Mortgagees which had been enacted in England especially the Trustee Act of two years ago.

The Motion was put and agreed to.

POWERS OF TRUSTEES AND MORTGAGEES.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to give Trustees, Mortgagees and others, in cases governed by English Law, certain powers now commonly invested in Settlements, Wills and Mortgages. He stated that the object was to extend to this country the provisions of the Act 23 & 24 Vic., cap. 145, which greatly simplified the law as to the powers of Trustees and Mortgagees.

The Motion was put and agreed to.

PROPERTY LAW AMENDMENT.

The Hon'ble MR. RITCHIE moved for leave to bring in a Bill to further amend the Law of Property, and to relieve Trustees in cases governed by the English Law. He stated that the object was to extend to India the provisions of the Act 22 & 23 Vic., cap. 35, so far as they were applicable.

The Motion was put and agreed to.

PARTITION OF ESTATES.

The Hon'ble MR. HARRINGTON moved for leave to bring in a Bill to consolidate and amend the law relating to the partition of estates paying revenue to Government in the North-Western Provinces of the Presidency of Fort William in Bengal. He stated that the object was to amend the law relative to the partition of estates paying revenue to Government. The present law was defective in respect of a numerous class of estates in the North-Western Provinces of Bengal, the property of two or more persons, the lands

comprised in which were held partly in severalty and partly in common. The wording of the present law precluded the application of its provisions to that description of estates, and even the lands in such estates as were held in common tenancy were not divisible under it. A more serious objection to the present law was to be found in the extremely dilatory character of the procedure which it prescribed. The present Bill had been approved by the Sudder Court of the North-Western Provinces, and legislation on the subject had been undertaken at the instance of the Lieutenant-Governor of those Provinces. As Bengal was to have a separate Council, he had confined the provisions of the Bill to the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till Wednesday, the 5th of February, at 11 A. M.

M. WYLIE,

Depy. Secy. to Govt. of India, Home Dept.

CALCUTTA ;
The 29th January 1862. }